

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ATHENA DIAGNOSTICS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 4:09-cv-40202-FDS
)	
AMBRY GENETICS CORPORATION,)	
)	
Defendant.)	

**PLAINTIFF'S ASSENTED-TO MOTION TO EXTEND TIME TO FILE
AMENDED COMPLAINT**

With the assent of the defendant ("Ambry"), plaintiff ("Athena") moves to extend by two weeks the time within which it may file an amended complaint in this action which will address an affirmative defense in Ambry's answer and amended answer. With the consent of Ambry, the Court granted Athena's motion to extend the time for Athena to file the amended complaint by right through March 1, 2010. Athena requests that the time be extended two further weeks, through March 15, 2010. As grounds for this motion, Athena states the following:

1. The amended answer that Athena will be filing relates to Ambry's affirmative defense that Athena allegedly lacks standing to sue Ambry for infringement because Athena is not the owner of the patent in issue in this action.
2. The patent is owned by Baylor College of Medicine ("Baylor"), which granted an exclusive license of the patent to Correlagen Diagnostics, Inc. ("Correlagen") which, in turn, granted an exclusive sublicense to Athena in the field of use that encompasses Ambry's alleged infringement.
3. This same pattern exists for three other actions that Athena has brought against Ambry for infringement of other patents, Civil No. 4:09-cv-40199-FDS, No. 4:09-cv-40200-

FDS, No. 4:09-cv-40201-FDS. The patents that are the subject of the other three actions are owned by The General Hospital Corporation (“MGH”), and University of Chicago (“Chicago”, which owns two of the other three patents), respectively. As with the Baylor patent in this action, MGH and Chicago granted an exclusive license of their respective patents in issue to Correlagen which, in turn, granted exclusive sublicenses to Athena in the field of use that encompasses Ambry’s alleged infringement.

4. In light of Ambry raising the issue of lack of standing, Athena will amend its complaint in each of the four actions to add as parties the respective owner of the patent in issue, and Correlagen, the exclusive licensee/sublicensor.

5. Correlagen has recently been acquired by another company, and the need to involve Correlagen’s new owner in discussions regarding Correlagen becoming a party to the litigation has taken longer than anticipated.

6. Therefore, with the consent of Ambry, Athena respectfully requests that the time within which it may file its amended complaint in this action be extended through March 15, 2010, thereby giving Athena time to complete the discussions with Correlagen and its new owner.

7. Ambry has asked that it be allowed to file its answer to the amended complaint by April 14, 2010. Ambry reserves all its rights to conduct discovery and contest all issues raised by Athena's amended complaint, including issues relating to the various parties' standing to sue and issues purportedly addressed by the amendment.

8. The requested extension will not delay the Court’s disposition of this action.

9. Accordingly, with the consent of Ambry, Athena respectfully requests the Court extend the time within which Athena may file its amended complaint through March 15, 2010,

and the time within which Ambry may file its answer to the amended complaint through April 14, 2010.

Certificate Under L.R. 7.1(A)(2)

The undersigned counsel for plaintiff certifies that he has conferred with defendant's counsel to attempt in good faith to resolve or narrow the issue presented by this motion, and that defendant's counsel has stated that defendant consents to the motion.

ATHENA DIAGNOSTICS, INC.

By its attorneys,

/s/ David J. Brody
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Dated: February 26, 2010

CERTIFICATE OF SERVICE

I, David J. Brody, hereby certify that this document filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 26, 2010.

/s/ David J. Brody
David J. Brody